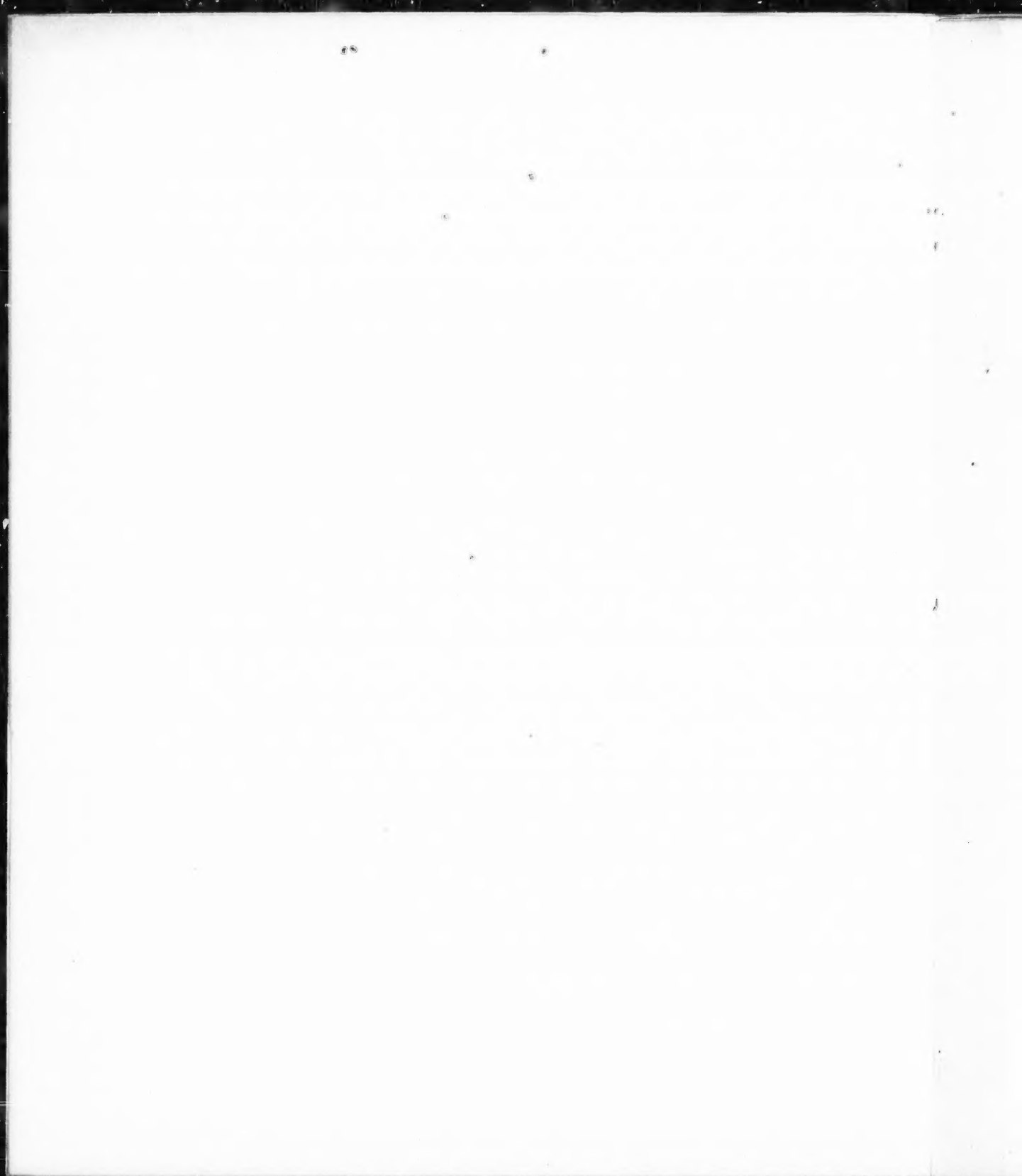






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PERTH DISTRICT COURT.

FEB 20 1883

Wednesday, 21st September 1883.

Sheldon Stoddard, Plaintiff.

vs.

Van Ranslaer Merrills, Defendant.

SPEECH OF
DANIEL McMARTIN, Esquire,
ONE OF
DEFENDANT'S COUNSEL.*May it Please your Honor!**Gentlemen of the Jury!*

This, without exception, is one of the most despicable and vindictive causes, that ever became the subject of judicial investigation,—and what is a still more deplorable consideration, it is a proceeding bottomed in subterfuge and iniquity. It is as has been represented an action of Tresspass, brought not however, as the Learned Counsel would induce you to suppose, by the Plaintiff Mr Stoddard.—No Gentlemen! it is an action instituted by a much more illustrious individual, no less a personage than Mr William Matheson, of this Town, a character deservedly stigmatized throughout this loyal and patriotic District, as the disturber of society and promoter of litigation; with a view, Gentlemen! not only to injure and to persecute an honest and industrious citizen, but, from a still more contemptible inducement, an anxiety to do away with his own accountability, and as such, I unhesitatingly pronounce it a most despicable, a most malignant, and a most infamous procedure.

That the Plaintiff Mr Stoddard, is indifferent to the result, appears very evident from his own representations;—Mark his language to the Defendant! “Merrills we will have a fair Yankee Trial. The property I am determined to recover if I can, if I am unsuccessful in my project I shall be just as well satisfied.” Now Gentlemen, what inference are we to draw from these disclosures? If this language be susceptible of any meaning at all, it goes most unquestionably to show, that the Plaintiff Mr Stoddard, is perfectly regardless of the result. And why, Gentlemen, is he regardless of the result? Because let the issue of this investigation be what it may, it is a matter of no earthly consequence to Mr Stoddard. The action very true is brought in his name; but what, I ask, is the object? It is merely to satisfy an indispensable formality. This proceeding, Gentlemen! believe me, is altogether attributable to the instrumentality of Mr William Matheson. To him it is indebted for its origin,—he is the individual interested,—he is the person responsible to Mr Stoddard,—and he is the person, Gentlemen! would you believe it? Who to exonerate himself is base enough this day to trample upon the rights and privileges of a fellow citizen.

If then, Gentlemen! a proceeding was ever calculated to arouse feelings of indignation in the breasts of an honest and upright Jury; if ever an action was brought under circumstances of a degrading and discreditable character; if ever a case merited judicial animadversion, it is the case under consideration. What are the facts?

It appears that the Plaintiff, in this Cause, during the winter of 1883, on a visit to this Town, put up at the celebrated Inn of Mr William Matheson. His horse, Gentlemen, as a matter of course, was put into the stable, and his sleigh as usual left in the yard. It appears, that there were several other sleighs in the yard, this same night, and among the number, one belonging to Mr Wickham of Beckwith, and which the Defendant, in this cause, it appears had permission to take for the purpose of removing a Keg of Tobacco, the property of a Mr Wacey. During the night,

the Defendant Mr. Morrills, directed a Frenchman, then living in this Town, by the name of Aller, to take the sleigh (recollect Gentlemen,) belonging to Mr. Wickham, and convey this Keg of Tobacco to the Shop of Mr. Wiley. Aller, however, no doubt from stupidity, in lieu of taking the sleigh belonging to Mr. Wickham, as he was directed, and which had been borrowed for the express purpose, unfortunately took that belonging to Mr. Stoddard the Plaintiff, and on his way to the Shop of Mr. Wiley, fell in with a Mr. Tully, then a Deputy Collector in this Town, and to whom he was compelled to surrender his cargo. The Tobacco, Gentlemen, was seized under the erroneous supposition that the revenue laws of the Country had been evaded, and the sleigh under the mistaken impression that it was equally liable, having on board smuggled property. What was the consequence? Mr. Stoddard, the owner of the sleigh, is recommended to Mr. William Matheson, then the only legal adviser in this part of the Country, and who, Gentlemen, (without any disparagement to his fame) was at this very period a Deputy Collector also. To adapt the language of the Poet,

"Honor and shame from no condition rise,
Act well your part, there all the honor lies."

This eminent Practitioner was accordingly consulted, and Mr. Stoddard, through his persuasion (poor simple man) was recommended to go before a Magistrate, and prefer an accusation of robbery against Mr. Tully. He did so—A warrant was issued, and Mr. Tully, as a British subject, deprived of his liberty. And for what, Gentlemen? For nothing more or less than a conscientious and upright discharge of duty, and all this too, to gratify the vindictive and unfeeling resentment of Mr. William Matheson. Mr. Tully had not long been in custody, however, before he was brought up for examination, and upon this examination the Magistrates who presided (after an impartial survey of this unprecedented, nay aggravating occurrence) were so thoroughly convinced of the innocence of Mr. Tully, and so indignant at the malevolence and injustice of this proceeding, that they abandoned it without the slightest reluctance. What, then, Gentlemen, must be your impression of the man, who to indulge the dictates of a momentary resentment, could persuade a credulous individual like Mr. Stoddard to tamper with the life and liberty of a British Subject? What, I say, must be your impression of the man, who to gratify the ebullitions of a transitory revenge, could meditate the destruction of a fellow citizen? And yet, Gentlemen, such I am instructed to say, has been the conduct of Mr. William Matheson. What says the Poet.

"He who slanders with his pen—will wield a knife,
But he who stabs your fame—will take your life."

This dishonest and iniquitous project (for I can view it in no other light) having therefore met with its merited destiny, Mr. Stoddard, and his disappointed advocate, are driven to adopt another expedient, and what, Gentlemen, is most extraordinary, this machination although indebted to the ingenuity of Mr. William Matheson, proves unsuccessful also. And here, I should neglect a most important duty, as well as betray an illiberality of feeling,—Indeed I should be depreciating the qualifications of Mr. William Matheson, did I not state to you, that at this early period he was but a young and inexperienced Practitioner. At this early period, Gentlemen, he had not attained that distinguished eminence in the profession of which he can now so justly boast. These circumstances therefore considered, it is by no means surprising, that his Client Mr. Stoddard, should have been uniformly unsuccessful, "It is practise," Gentlemen, "that makes perfect."

When Mr. Stoddard, the Plaintiff, found that Tully was determined to be influenced by motives of obstinacy, and to set at defiance the suggestions of reason, he as a prudent man, and as a man anxious to retrieve his property, should have attended the Quarter Sessions at Brockville, particularized the circumstances under which the sleigh was taken, and shewn that he was in no way connected with the removal of the Tobacco. Had he done this, such a representation combined with an appeal to the justice and equity of that impartial tribunal, would have been quite conclusive. Yes Gentlemen? had he adopted this alternative, an order, beyond all dispute, would have issued for the restoration of the property. This course, I believe, was contemplated by Mr.

Stoddard, but unfortunately, Gentlemen, he was dissuaded from the action, and as you will presently see, once more led astray by the mischievous interference of Mr William Matheson.

You will understand, Gentlemen, that at this juncture, Mr William Matheson was professedly hostile to Mr Tully, and as a natural consequence, indefatigable in his zeal to do him an injury. So that when Mr Stoddard gave him to understand, that he saw no alternative but an application to the Court of Quarter Sessions at Brockville, Mr William Matheson ridicules the idea. "The sleigh" exclaims this important personage, "is privileged from seizure,—Allow Tully to triumph in his obstinacy,—Suffer him to dispose of the property,—And then bring your action to recover its value." Mr Stoddard, (poor simple man) conceiving this to be an admirable invention, is induced once more to adopt the recommendation of Mr William Matheson. What is the consequence? The property having no claimant is unavoidably condemned and sold by virtue of a legislative enactment. And then follows the very ingenious contrivance suggested by Mr William Matheson. But what, I ask, Gentlemen, is the result? Mr Stoddard finds out that he is egregiously mistaken. He is once more compelled to deplore his childish credulity. He discovers when too late, that the condemnation of the property is conclusive evidence of the legality of the seizure, and consequently, that Mr Tully is not accountable.

After such a repetition of disappointments, one would naturally have supposed that Mr Stoddard would have been discouraged from attempting any further experiment, and that he would have readily exclaimed in the language of the Poet,

"Fortune and Hope, adieu! I see my port,
Too long your dupe; Be others now your sport."

Strange to say, however, Gentlemen! notwithstanding these reiterated disappointments the confidence of Mr Stoddard still remains unshaken, and Mr William Matheson aware of his captivating influence, exerts his endeavours once more, and as a last alternative, prevails upon this deluded victim to declare hostilities against my Client. "Bring an action" says he "against that fellow Merrills, (mark his unblushing effrontery!) and I will cheerfully appear as a witness against him,—The sleigh, you know, was taken out of my yard, and I am unquestionably responsible to you,—Bring an action therefore, I say, against that fellow Merrills, and if the stratagem is unsuccessful, I will pay all costs."

Such then, Gentlemen, is a brief history of the circumstances under which the present action has been instituted, and are they not (candidly speaking) of the most degrading and disgraceful character? Do they not, I say, abundantly testify the infamy, the injustice, nay, the monstrous turpitude of this procedure? With what pretensions then the learned Counsel can arrogate to himself your verdict, I am really at a loss to determine. But to come to a conclusion.

It will be distinctly proved in evidence this day,—Yes Gentlemen! it will be established beyond controversy, that the Defendant, in this Cause, borrowed the sleigh of Mr Wickham, to remove this identical Tobacco. The presumption therefore is, that the Defendant, of course, directed Aller to take this sleigh, and not the sleigh of Mr Stoddard, as the learned Counsel has so industriously attempted to establish,—and if so, my Client certainly cannot be held accountable for the mistake of Aller. Suppose for the sake of argument, Gentlemen, that one of you should borrow a horse, and direct your servant to go a particular field, and take this horse. The servant through mistake, brings the horse of another individual. Would you consider yourself responsible? Gentlemen, it would be unreasonable to think so. The Law of the land is,—That where ever the servant exceeds the authority, or deviates from the instructions of the master, the master is not accountable. Indeed, a contrary doctrine would be pregnant with most hazardous results. But, Gentlemen, discard this consideration altogether. There is still a formidable obstacle to the Plaintiff's recovery,—Suppose it should appear to you this day (as I am instructed to say it will) that the Plaintiff, Mr Stoddard, could have obtained the sleigh in question, by contesting the va-

Wm. L. Latham

justify the seizure, in the first instance, - Suppose it should appear to you that the condemnation of the property proceeded altogether from his own negligence, that it was the result of his obstinacy and indiscretion, Would it be just and equitable under such circumstances, I say, to contend that my Client should sustain the loss? Gentlemen! you appear to me to be respectable and intelligent citizens, and as such, I know you will be exemplary in the discharge of this important duty, and that you will never suffer your reputations to be tarnished by an unjust, let me add, a remorseless, and iniquitous verdict.

I shall now, Gentlemen, call the Witnesses on the part of the defence, they are Witnesses, believe me, of unblemished reputation, and from their testimony, I think, you will be perfectly satisfied, that there is little or no pretext to justify this hostile aggression. Yes Gentlemen, from their testimony you will learn this day, that this prosecution has been dictated by a degrading selfishness, that it is the offspring of unmerited persecution.

JAMES BOULTON, Counsel for Plaintiff.

DANIEL McMARTIN,
&  } Counsel for Defendant.

Warning
Beat me if you can.

